

WRITTEN TESTIMONY IN SUPPORT OF HB-5511, AN ACT CONCERNING THE BUDGET, SPECIAL ASSESSMENT AND ASSIGNMENT OF FUTURE INCOME APPROVAL PROCESS IN COMMON INTEREST OWNERSHIP COMMUNITIES.

Submitted by:
Brian N Harte
Address Legally Suppressed

To: Connecticut General Assembly
Judiciary Committee and Subsequent Committees re: HB-5511

My name is Brian Harte and I am writing this testimony to you both as an individual who owns a condominium unit, and also as a ranking member of the Connecticut Condo Owners Coalition.

The Common Interest Ownership Act, as a whole, is a general set of instructions that prods Common Interest Associations, as applicable, to follow the law. I look at laws and statutes on a daily basis and use it in much of my daily work, as well as in my involvement with the CCOC. I see the law as a bilateral system. The law is designed to serve the people, while the people have the obligation to adhere to the law.

As a condo owner in this state, and former member of the Board of Directors for my association, I can tell you without hesitation that the CGA's mere acknowledgement of the issues that condo and HOA owners face is a step in the right direction.

Raised Bill No. 551¹ reinforces that step in several ways, which is why I am writing to you as an acknowledgement of my support of this bill.

While associations across the state, such as Heritage Village in Southbury or where I reside have seen considerable adverse effects related to CGS 47-261, it is comforting to know that our words are being heard.

I hereby fully support HB-5511, subsections (a) through (c) inclusive. But I believe that there is still more that can be done with this bill. What is troubling to me is that subsections (d) and (e) have basically become the beneficiaries of what has been removed from the earlier subsections of the bill / statute. We are now facing the same aspects of what needed to be removed from Budget and Special Assessment language by what was included in the association's right to assign its' future income through loans.

Ladies and gentlemen: Across the state, and even in this budget year session, the consensus has been cost reduction, cutbacks, and prioritization of legislation that will not incur a cost to the state. So, my comments here are necessary.

If the state itself is trying to get itself out of a deficit, is it not prudent to acknowledge that many residents of this state are in similar financial situations? People are losing jobs, homes are being foreclosed upon, and many are living at a poverty line threshold; paycheck-to-paycheck, hoping that their jobs will still be there tomorrow. But as everything in terms of cost in the State rises, including income and sales tax, food, gas, etc., our paychecks do not.

Some of this commentary will echo aspects of my testimony for HB-5536, but the bottom line is that the control of the condo industry is big business at its' best. Lawyers specialize in condo association defense, management companies are *not* in the business of *not* making a profit, and the law itself is placating the businesses and such that thrive on making money off of one's residence in a condo. These are our homes, they are not, nor should they be sources of *income* for anyone other than the holder of our mortgages and applicable municipal taxes.

The fact is that I know that barring any unforeseen circumstances; my mortgage will remain the same, each month, every month for the life of the mortgage. Now if I lived in a house on my own personal property, it would be my decision to hire someone to cut the grass, or do it myself. Same concept applies to snow plowing. Similarly, town/ city dependent, trash pick-up is incorporated into municipal services covered by taxes.

However, in the environment of a condominium complex such as ours, we still must pay for our municipal taxes in full. Yet we receive no services from them. Our HOA fees then cover the additional cost for snow removal from our streets within our complex, trash removal and the like. It boils down to double taxation.

We must pay also, through our HOA fees, for a property management company just to exist. We pay for legal services; meanwhile the only people who are able to use the association's attorney are those on the Board of Directors. Yet we have to pay to protect 'them' from 'us.' Moreover that same attorney will not protect us from them.

Pursuant to subsection (d) and (e) of the proposed bill, the unit owners are yet again faced with a 51% majority vote (of all unit owners) needed to disapprove loan agreements. As my examples explain, we face losing our homes if we cannot afford higher fees. One can be current with their mortgage and still be foreclosed upon for unpaid HOA fees.

And the most alarming aspect is that once again we are still faced with a law that is largely unenforceable; which can be adhered to, or ignored without repercussion. There needs to be teeth to not just this bill, but CIOA as a whole.

In testimony before the Judiciary Committee on March 25, 2011, regarding HB-6620, Attorney General George Jepson went on record stating, "My office has received hundreds of complaints from condominium unit owners regarding violations of state condominium laws or condominium bylaws by their association board of directors. Sadly, no state office exists to effectively assist these unit owners. The state agency established in House Bill 6620 would provide help to outmatched, overwhelmed unit owners who are fighting for their basic rights under our condominium laws."

As Attorney General Jepson pointed out, sadly, again there is no real means of enforcement even with current Bill submissions.

These are the aspects I request be taken into consideration in this bill. My support is unwavering for subsections (a) through (c), but I believe that more can be accomplished here. Please see attachments for supporting documentation.

I do applaud the efforts of Representatives Len Greene and Themis Klarides in co-sponsorship of this bill and thank the Judiciary Committee for their time.

Respectfully Submitted,
Brian N Harte



OLR RESEARCH REPORT

December 2, 2011

2011-R-0434

CONDOMINIUM LIST AND EDUCATION PROGRAMS

By: James Orlando, Associate Analyst

You asked if the Secretary of the State's Office or the Department of Consumer Protection (DCP) maintain a list of all condominium associations in the state. You also asked if any states have laws or programs to educate condominium owners or board members about the law and their rights.

SUMMARY

Neither the Secretary of the State's Office nor DCP maintain a list of all condominium associations in the state. Some condominium associations are limited liability companies (LLCs), and thus register with the secretary of the state, but the LLC registry does not necessarily identify them as such (unless condominium appears in the title, for example). DCP does have a list of community association managers, who are required by law to register with DCP (see Chapter 400b).

The Connecticut Housing Finance Authority (CHFA) maintains a list of condominium complexes that are approved for CHFA financing programs, provided they are eligible for Federal Housing Administration insurance. While the list is extensive, it does not include all condominiums in the state. The list is available at the following link:
<http://www.chfa.org/Homeownership/for%20Homebuyers/Tools%20Calculators%20and%20Look-ups/EligibleCondominiums.aspx>.

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Connecticut law does not require education programs for condominium owners or board members, but does require condominium boards to encourage board members and specified others to attend training programs.

We found laws or programs in a small number of other states concerning education for condominium unit owners or board members. For example, Colorado requires condominium education for unit owners, which the associations must provide or cause to be provided free of charge. For another example, Florida requires new board members to meet educational requirements unless they, among other things, certify to having read the condominium documents. Florida law also requires the Division of Florida Condominiums, Timeshares, and Mobile Homes to provide condominium training programs to unit owners and board members.

Below, we describe Connecticut's law in more detail. We also summarize examples of condominium education programs or requirements in Colorado, Florida, Hawaii, and Nevada. Please note that these examples do not include required education or other qualifications for community association management companies or similar entities the associations hire. If you would like information on that topic, please let us know.

CONDOMINIUM EDUCATION

Connecticut

Connecticut law does not require education programs for condominium owners or board members. The Common Interest Ownership Act (CIOA) does require each common interest community association's executive board, or an officer the board designates, to encourage association and board members and officers and managing agents or people providing association management services, to attend, when available, a basic education program concerning the (1) purpose and operation of common interest communities and associations and (2) rights and responsibilities of unit owners, associations, and executive board officers and members.

The law authorizes the executive board, or an officer it designates, to arrange to have the program conducted by a private entity at a time and place convenient to a majority of association members. It allows all or part of any program fee to be designated as an association common expense and paid from association funds in whatever manner the

executive board determines and the association approves as long as the bylaws and CIOA do not prohibit it (CGS § 47-261a).

Colorado

Colorado law requires common interest community associations to provide, or cause to be provided, free education to unit owners as to the (1) association's general operations and (2) rights and responsibilities of owners, the association, and its board under Colorado law. The education must be provided at least annually.

Each association's executive board must determine criteria for compliance with this education requirement. The requirement does not apply to associations with time-share units (Col. Rev. Stat. Ann. § 38-33.3-209.7).

Colorado also allows a board to reimburse board members, as a common expense, for their actual and necessary expenses in attending educational meetings and seminars on responsible association governance. The course content must be specific to Colorado and refer to applicable Colorado statutes (Col. Rev. Stat. Ann. § 38-33.3-209.6).

Florida

Division of Condominiums and Condominium Ombudsman. In Florida, the Division of Florida Condominiums, Timeshares, and Mobile Homes enforces condominium laws. The law requires the division to provide training and educational programs for condominium association board members and unit owners. The training can include both online and live training. The division can review and approve education and training programs by private providers. The division must keep a current list of approved programs and providers and make the list available to board members and unit owners in a reasonable and cost-effective manner (Fl. Stat. Ann. § 718.501).

According to the division's most recent annual report, during the 2010-2011 fiscal year, the division provided courses in the following topics for unit owners and board members: board member responsibilities; budgets and reserves; elections; financial reporting; 2010 legislative updates; and the complaint process. The division conducted 42 training sessions during the year, reaching over 3,400 attendees. The division also produced and distributed over 2,300 copies of condominium educational CD-roms.

The annual report is available at the following link:
<http://www.myfloridalicense.com/dbpr/lsc/documents/FCTMHAnnualReportFinalFY2010-11.pdf>.

The division maintains a page on its website with information related to condominium education, such as approved education providers, educational materials, and a link to request a CD (in either English or Spanish) as described above. The page is available here:
<http://www.myfloridalicense.com/dbpr/lsc/condominiums/CondoEducation.html>.

Florida has an Office of the Condominium Ombudsman, located for administrative purposes within the division. The ombudsman serves as a resource for condominium matters. Among other duties, the ombudsman must develop policies and procedures to assist unit owners, boards of directors, board members, community association managers, and other affected parties to understand their rights and responsibilities under the law and the condominium documents governing their associations. The ombudsman must coordinate and assist in preparing and adopting educational and reference material. The ombudsman must also coordinate with private or volunteer providers of these services, so that the availability of these resources is made known to as many people as possible (Fl. Stat. Ann. § 718.5012). The ombudsman's web page is available here: <http://bpr.state.fl.us/condos/>.

Requirements for New Directors. In Florida, within 90 days after being elected or appointed to a condominium board, each newly elected or appointed director must do one of the following:

1. certify in writing to the association's secretary that he or she (a) has read the association's declaration, articles of incorporation, bylaws, and current written policies; (b) will work to uphold these documents and policies to the best of his or her ability; and (c) will faithfully discharge his or her fiduciary responsibility to the association's members or
2. submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after election or appointment.

A director who fails to timely file the written certification or educational certificate is suspended from serving on the board until complying with this requirement.

The written certification or educational certificate is valid as long as the director serves on the board without interruption. The association must keep a director's written certification or educational certificate for inspection by the members for five years after a director's election. Failure to have a written certification or educational certificate on file does not affect the validity of any board action (Fl. Stat. Ann. § 718.112(2)(d)).

Hawaii

Condominium Education Trust Fund. Hawaii law requires the state's Real Estate Commission to establish a condominium education trust fund (CETF) for educational purposes, including financing or promoting (1) education and research in the field of condominium management, condominium project registration, and real estate, to benefit the public and those required to be registered under applicable law; (2) the improvement and more efficient administration of associations; and (3) expeditious and inexpensive procedures for resolving association disputes (Haw. Rev. Stat. Ann. § 514B-71).

The Real Estate Commission's 2010 Annual Report contains information on the commission's condominium education efforts. For example, the commission administered CETF subsidies for several commission-approved seminars. Seminar topics included a legislative update; annual meetings; board meetings; dealing with aging buildings; and more. The commission published two new information booklets, on owners' rights and responsibilities and board member powers and duties, and sponsored a free seminar in connection with the booklets.

The commission's 2010 Annual Report is available here:
[http://hawaii.gov/dcca/real/reports/Annual%20Report 2010 final.pdf](http://hawaii.gov/dcca/real/reports/Annual%20Report%202010%20final.pdf).

Board Education. Under Hawaii law, condominium boards can spend association funds to educate and train themselves in subject areas directly related to their duties and responsibilities as directors. The law specifies that such funds are not deemed to be compensation to directors. The annual budget must include these education and training expenses as separate line items. These expenses can include registration fees, books, videos, tapes, other educational materials, and economy travel expenses (Haw. Rev. Stat. Ann. § 514B-107).

Nevada

In Nevada, the Commission for Common-Interest Communities and Condominium Hotels, among other duties, must develop and promote educational guidelines for (1) conducting board elections, board meetings, and unit owner meetings and (2) enforcing an association's governing documents through liens, penalties, and fines. The commission must also recommend and approve for accreditation programs of education and research relating to common interest communities, including programs related to (1) managing common interest communities; (2) unit sale and resale; (3) alternative methods to resolve disputes; and (4) enforcing liens on units for failure to pay assessments or fines, including by foreclosure (Nev. Rev. Stat. Ann. § 116.665).

Nevada law allows the commission to promulgate regulations setting standards for subsidizing educational programs for the benefit of unit owners, board members, and officers (Nev. Rev. Stat. Ann. § 116.670). The commission's web page is available here:
http://red.state.nv.us/cic/commission_info.htm.

Nevada also has an Office of the Ombudsman for Owners in Common-Interest Communities and Condominium Hotels. The ombudsman's office offers free seminars for people who live, work, or own property within homeowners associations. Recent seminar topics included maintenance, insurance, and risk management; fiscal matters; and reserve studies.

The ombudsman's office created a Nevada Common-Interest Community Manual. Among other things, the manual explains what associations are and how they are governed, summarizes applicable laws, and explains how to use ombudsman services. The ombudsman's office has also created video tutorials for certain topics. More information is available on the ombudsman's web page, available here:
<http://red.state.nv.us/cic/cic.htm>.

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Connecticut Attorney General's Office

Press Release

Attorney General Urges Legislature To Establish Condominium Ombudsman To Protect Condo Owners

February 16, 2010

Attorney General Richard Blumenthal, in testimony submitted today to the state General Law Committee, urged creating a state Office of Condominium Ombudsman after his office received hundreds of complaints from condominium owners over the past year involving disputes with condominium associations.

The legislation would create a self-funded state commission -- with no financial burden to state taxpayers -- to review condominium unit owner complaints concerning violations of state condominium laws by the association's board of directors, officers or professional managers.

The ombudsman would also review complaints about violations of condominium bylaws concerning finances, calling or conduct of association meetings or access to public records of the association. The ombudsman would review any disputes and, if necessary, it would hold a hearing and issue orders to resolve problems and ensure that bylaws and state laws are respected.

The proposal encourages that unit owners and associations first seek to resolve disputes through a dispute resolution procedure before relying on the state ombudsman.

"A Condominium Ombudsman would provide help to outmatched, overwhelmed unit owners who are fighting for their basic rights under our condominium laws," Blumenthal said. "Many of the complaints received by my office concern failures by association boards of directors to follow basic governance principles such as adopting an annual budget with notice to the unit owners, holding fair elections for the board of directors, providing key financial information about the association, and fairly imposing association fines.

"Some of these complaints are based on deliberate indifference by association boards to association bylaws or state condominium laws -- or a lack of full understanding of condominium association responsibilities.

"The current law is unfair to unit owners. The law imposes certain responsibilities on condominium association boards of directors and establishes certain rights for unit owners. The unit owners must hire -- at their own expense -- a lawyer to enforce those rights and responsibilities while the association boards of directors can defend themselves using association funds, raised through assessments on the unit owners. Thus, unit owner funds are used to defend lawsuits brought by unit owners themselves.

"A Condominium Ombudsman will provide much-needed assistance to unit owners and provide an important enforcement tool for our condominium laws."

Blumenthal proposes that the office be funded through a simple fee structure: a small \$4 per unit annual assessment on condominium associations in the state. This charge is the same as assessed in Florida in order to pay for that state's ombudsman program. There are approximately 240,000 condominium units in Connecticut so the \$4 charge will yield \$960,000.

In addition, the proposal requires a filing fee of \$35 (the same as in small claims court prior to last session's increase) paid by the complainant and another \$35 filing fee paid by the association. The fee on the association also encourages the association to resolve the matter prior to intervention by the ombudsman. If there are 1,000 complaints filed, this fee will yield \$70,000.

Finally, the proposal increases the condominium manager's filing fee from \$100 annually to \$400 biennially. There are 300 registered condominium managers so the fee will generate \$120,000 in revenue every two years.

Blumenthal's office has received hundreds of complaints from condominium unit owners regarding violations of state condominium laws or condominium bylaws by their association board of directors.

Under this proposal, the Attorney General, upon referral by the ombudsman, may bring a civil action to enforce the provisions of the condominium bylaws or state statutes regarding condominiums. A provision of the legislation would allow the ombudsman to impose a civil penalty of not more than \$200 for any knowing violation.

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